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IN THE

Supreme Court of the United States

October Term, 1967.

No. 1087.

STATE OF NEW YORK,

Petitioner,

v.

MORTON SALT COMPANY, PIONEER SALT COMPANY, SALT SERVICE INCORPORATED, INTERNATIONAL SALT COMPANY, CAYUGA ROCK SALT COMPANY, DIAMOND CRYSTAL SALT COMPANY,

Respondents.

BRIEF FOR RESPONDENTS INTERNATIONAL SALT COMPANY, PIONEER SALT COMPANY, AND SALT SERVICE, INCORPORATED IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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I.

COUNTER-STATEMENT OF THE QUESTION INVOLVED.

Should this Court grant certiorari to review the exercise of a district court's discretion in denying an untimely motion for intervention by the State of New York under F. R. C. P. 24 into a spurious class action under former F. R. C. P. 23(a)(3), where

(A) the attempted intervenor, knowing all the facts, deliberately elected not to seek intervention before the class was closed by court Order, issued almost six months prior to the closing date and pursuant to additional advance notice, of which the attempted intervenor was aware, given nearly one year before the closing date,

(B) the belated motion to intervene did not offer lack of notice, or any other reason or excuse whatsoever, to justify the attempted intervenor's deliberate decision not to seek intervention before the class was closed, and

(C) such untimely intervention would greatly prejudice the rights of the defendants who have settled with virtually all of the intervening class members in reliance upon the Order closing the class prior to the untimely attempted intervention?

II.

COUNTER-STATEMENT OF THE CASE.

Petitioner in this action is seeking review by Writ of Certiorari of the District Court's discretionary denial, affirmed *per curiam* by the Court of Appeals, of Petitioner's untimely motion for intervention into a treble damage "spurious" class action brought under former F. R. C. P. 23(a)(3) against manufacturers of rock salt. Petitioner's motion to intervene, bearing the name of the Attorney General of New York, was not filed until June 14, 1966 (182a).[1] This date was (a) two weeks after the class had been closed on June 1, 1966 pursuant to an Order of the District Court issued almost six months earlier on December 7, 1965 (170a); (b) two weeks after the timely filing of another Petition to Intervene bearing the name of the Attorney General of New York on behalf of the New York Thruway Authority (6b-9b); (c) more than one year after the District Court had first announced on June 9, 1965 its intention to close the class on July 1, 1965 (192a); (d) more than seventeen months after defendant International Salt Company had filed a motion to close the class, which motion was the subject of repeated discussion and argument before the District Court for more than a year thereafter until it was finally granted (34a-35a, 37a-50a, 17b-26b, 76a, 89a, 106a, 34b-42b); (e) more than three years after the class action itself had been commenced on June 1, 1963 (26a); and (f) more than six years after Petitioner had first learned of the alleged conspiracy charged in the class action, and had conducted its own independent investigation into the matter

1. Citations to portions of the record printed with the Petition for Certiorari are preceded with the designation "Pet. App."; citations to the appendices of Appellant and Appellees in the Court of Appeals —which appendices are part of the record before this Court—are designated by a number followed by "*a*" and "*b*", respectively.

(1b-5b, 12b, 14b, 16b, 205a-06a). Petitioner's motion to intervene was also not filed until a massive amount of discovery had already been completed by the original plaintiff and the eighty-one intervening plaintiffs who did intervene in a timely manner; and finally, intervention was not sought by Petitioner until intensive settlement discussions were underway between the parties—discussions which led to settlement by many defendants with most, if not virtually all, of the plaintiffs of record in the class action (25a, Docket Entries 603 and 604).

On August 10, 1966, Petitioner commenced an independent suit against some of the defendants in the original action. This suit is now pending in the Eastern District of Pennsylvania, *State of New York v. Cayuga Rock Salt Company, Morton Salt Company, International Salt Company, and Highway Materials Co., Inc.*, E. D. Pa., Civil Action No. 40919.

On February 1, 1967, Judge Joseph S. Lord, III, of the District Court (to whom the case was assigned after the death of Judge Allan K. Grim), denied Petitioner's motion to intervene (217a). Petitioner thereupon took an appeal to the Court of Appeals for the Third Circuit. In a unanimous *per curiam* opinion, the Court of Appeals (per Hastie, Freedman and Seitz, JJ.) on November 5, 1967 affirmed the District Court's decision (Pet. App., 1a-4a). The Court of Appeals noted that, despite the patent untimeliness of Petitioner's motion to intervene, the motion "set forth no reasons to excuse the tardy filing" (Pet. App., 3a). Holding that "a district court, in the exercise of discretion, may fix a reasonable terminal date for intervention" (Pet. App., 3a), the Court affirmed the lower court's denial of Petitioner's motion because no abuse of discretion had been shown (Pet. App., 4a). It is this Judgment and Opinion that Petitioner now asks this Court to review by Writ of Certiorari.

III.

REASONS FOR DENYING THE WRIT.

A. Petitioner Has Offered No Justification for Its Failure to Seek Intervention Before the Class Was Closed Pursuant to Advance Notice.

This case presents a single limited issue: did the District Court act within the limits of its discretion in declining to reopen a closed class to grant a belated and untimely motion for permissive intervention?[2] That this question does not raise any "special or important reasons" for discretionary review by this Court on Writ of Certiorari (Supreme Court Rule 19) is evident from the lengthy history of this well publicized litigation. This history conclusively establishes that Petitioner had ample opportunity to intervene before the class was closed, that Petitioner had adequate notice that the class would be closed on June 1,

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2. Petitioner has vaguely suggested that it might be entitled to intervene in this case as a matter of right under F. R. C. P. 24. The Court of Appeals found it unnecessary to pass on this contention, which was not raised in the trial court, except to note that the provision of Rule 24 covering interventions as of right requires "timely application," a condition which Petitioner failed to meet in this case. But in any event, it is clear that Petitioner never had any absolute right to intervene. F. R. C. P. 24 permits intervention as of right only where the applicant claims an interest relating to "the property or transaction which is the subject of the action" and disposition of the action "may as a practical matter impair or impede his ability to protect that interest." There is no "property" or "transaction" in the original action here in which Petitioner has an interest, and the disposition of that action can in no way affect Petitioner's rights, which are in any event being pressed in a separate suit. The decision of this Court in *Cascade Natural Gas Corp. v. El Paso Natural Gas Corp.*, 386 U. S. 129 (1967), cited at p. 11 of the Petition has nothing to do with this case. In *El Paso*, no question was raised concerning the timeliness of intervention, and this Court held only that where a gas company had been ordered to divest itself of another gas company acquired through an illegal merger, a competitor who suffered competitive disadvantage from the merger had a direct interest in the terms of the divestiture and therefore was entitled to intervene as of right under new F. R. C. P. 24(a)(3).

1966, and that Petitioner has offered no excuse whatsoever for its failure to seek intervention prior to the cut-off date.

The Background of Government Rock Salt Litigation.

In May, 1959, the federal government first convened a grand jury to inquire into the rock salt industry. This grand jury was followed by two more panels, before which numerous witnesses were subpoenaed to appear at many sessions. The proceedings before these grand juries were accompanied by widespread publicity in the press (205a-06a, 15b-16b). Petitioner State of New York was thoroughly aware of these governmental investigations from their inception. Indeed, Petitioner's knowledge antedated the government's action because Petitioner had been receiving communications from the Port of New York Authority as early as 1957 concerning the prices of rock salt, identical bidding, or alleged or suspected violations of the antitrust laws having to do with rock salt or similar products (1b-5b, 12b, 14b). In the fall of 1960, the Attorney General of Petitioner, Louis J. Lefkowitz, went so far as to institute his own formal investigation into alleged rock salt price fixing (205a-06a, 16b).

On June 28, 1961, the third government grand jury finally handed down a criminal indictment in the District Court of Minnesota, charging defendants International Salt Company, Morton Salt Company and Diamond Crystal Salt Company, together with another defendant (Carey Salt Company) not a party to this action, with a conspiracy to fix the prices of rock salt in violation of the antitrust laws (32a). A five-week trial was held which ended on June 7, 1962 with a jury verdict of acquital for all defendants.

Thereafter the government pressed a companion civil suit, commenced in the Minnesota Court July 1, 1961, seeking injunctive relief based upon the evidence submitted in the record of the criminal case. This action was terminated

with respect to the Carey Salt Company by a consent decree entered on March 26, 1962, and with respect to International by a consent decree entered on November 4, 1963. The case proceeded to trial against the remaining defendants, Morton and Diamond, and was finally terminated with respect to them on October 25, 1965 by the decision of this Court affirming the decree entered by the trial court. *Morton Salt Company v. United States,* 382 U. S. 44 (1965).

The Instant Litigation.

On July 1, 1963, the City of Philadelphia commenced a treble damage action against Respondents under former F. R. C. P. 23(a)(3) on behalf of a class alleged to consist of "all other state and municipal governments, governmental agencies and governmental subdivisions similarly situated" (26a), alleging a conspiracy among respondents to fix the prices of rock salt in violation of the antitrust laws. This suit was the first of a series of treble damage actions brought in seven different states in the wake of the government criminal and civil antitrust proceedings referred to above.

Beginning in 1964, numerous members of the alleged class which the City of Philadelphia claimed to represent sought to intervene pursuant to F. R. C. P. 24(b), asserting that their claims presented questions of law or fact common to the class suit (3a-6a). Petitioner did not, however, choose to intervene at this time, despite the fact that Petitioner's Attorney General had not only conducted his own rock salt investigation in 1960, but also now had available to him the entire public transcript of the five-week criminal trial which the government has prosecuted in 1962.

On January 5, 1965, defendant International filed a motion in the alternative to close the alleged class (34a-35a). During the next year, this motion was the subject of repeated arguments, correspondence, and discussions before the lower court, all of which were widely publicized.

The question of when the alleged class should be closed was orally argued for the first time on April 21, 1965 (37a-50a, 17b-26b). On May 12, 1965, the District Court (the late Hon. Allan K. Grim) granted motions to intervene which by that time had been filed by 59 municipal or governmental agencies including (from the state of New York) New York City, New York City Transit Authority, Port of New York Authority, and the town of Oyster Bay, Long Island (53a). Again, Petitioner did not seek intervention at that time, although it then had available to it the initial fruits of discovery in the instant action, as well as the information obtained from its own prior investigation and the government litigation.

On June 9, 1965, the question of closing the class arose again when Judge Grim wrote to Petitioner's counsel, who then represented the City of Philadelphia and all but two of the intervening plaintiffs, noting that the second anniversary of the commencement of the class suit (July 1, 1965) was approaching, and stating that "I am thinking of entering an order closing the class as of that time to prevent any additional interventions after that time" (192a). On the following day, June 10, 1965, the National Institute of Municipal Legal Officers (NIMLO) sent out a notice to all of its thousands of members throughout the country calling attention to Judge Grim's letter, and stating that interventions would probably be barred after the class was closed, although separate actions could be maintained if the applicable statute of limitations had not run (208a-09a).

Petitioner's counsel then wrote to Judge Grim objecting to closing the class on July 1, 1965 (207a-08a), and the class remained open pending further argument on July 20, 1965. At that time, Judge Grim again expressed the view that "as of now, as a practical matter, maybe the class should be closed" (76a), and noted that

> "The Court has control of its own calendar to the point where if it says, 'It is getting to the point where I just can't control all these litigants and I am going to stop this and close this up,' I can't imagine that the discretionary power would not be admitted by an appellate court." (89a)

Petitioner's counsel specifically agreed with this observation, stating that "I think Your Honor would be right as far as the trial is concerned. I don't deny that . . ." (89a). Nevertheless, Judge Grim continued to allow the alleged class to remain open, and by December 6, 1965, an additional nine plaintiffs, including the City of Rochester, New York, had been permitted to intervene (6a, 9a, 10a, 12a, 13a). Once more, however, Petitioner was not among the intervenors.

On November 29, 1965, Judge Grim for the third time raised the question of closing the alleged class (34b-42b), and on December 6, 1965 yet another argument was held on this issue. Judge Grim then repeated that the only question in his mind was when the class should be closed, and said that in his judgment it should be closed well before trial (106a). He further indicated that he wanted notice of the closing to be circulated to potential class members throughout the country (107a), and in response to this request, counsel for NIMLO promised to send out such a notice immediately upon receipt of Judge's Grim's order (160a-63a).

Defendants urged that the alleged class be closed on December 31, 1965 (137a), pointing out that several similar state and municipal class actions involving rock salt which had been brought in other districts against the defendants *subsequent* to the filing of this suit were all being closed at the end of 1965 (136a, 189a). Judge Grim, however, decided to hold the class open until June 1, 1966, and entered an Order to that effect on December 7, 1965.

In the next six months, an additional thirteen parties (again not including Petitioner) intervened as plaintiffs (17a, 18a, 19a, 21a, 23a). One of these intervenors was the New York State Thruway Authority, which filed a motion to intervene on May 31, 1966, the final day before the class closed. The motion was filed over the name of Louis J. Lefkowitz, who appeared as one of the attorneys for the Authority (6b, 9b). When Petitioner, State of New York, at long last filed its belated motion to intervene on June 14, 1966, the name of Mr. Lefkowitz again appeared on the motion as Attorney General for the State of New York (182a).

On February 1, 1967, Judge Joseph S. Lord, III (who had then been assigned to this case after the death of Judge Grim) entered an Order denying the motion to intervene filed by Petitioner on June 14, 1966 and reaffirming Judge Grim's Order of December 7, 1965 that the class in this case would be, was, and is irrevocably closed as of June 1, 1966 (217a).

By the time Petitioner had belatedly attempted to intervene, two other significant developments had occurred in this litigation. First, intensive settlement negotiations were underway between the parties. These negotiations, which had begun in earnest in the early part of 1966 shortly after the District Court's Order of December 7, 1965 was entered, ultimately led to settlement by many defendants with most, if not virtually all, of the plaintiffs of record in this class action (25a). The Order of December 7, 1965 closing the class on June 1, 1966 was essential to these negotiations because it would otherwise have been impossible for the defendants to make any determination of the possible scope of their alleged liability. Indeed, International had consistently maintained throughout the litigation that any settlement was impossible without a final dismissal of the class suit as to it (54b-58b), and Judge

Grim had recognized the validity of this position on December 6, 1965 when he said: "I think if it isn't [closed], it might stand in the way of settlement" (106a). Judge Lord also agreed with this view, for he enabled International to settle on February 6, 1967 with all plaintiffs (except the City of Baltimore, which was permitted to maintain a separate suit) by terminating the class action as to International on that date (25a, Docket Entries 603 and 604).

The second crucial development which preceded Petitioner's untimely effort to intervene was the completion of a massive volume of discovery by all parties. A few statistics will indicate the dimensions of this discovery. Prior to June 1, 1966, plaintiff or the intervening plaintiffs had filed five different sets of interrogatories against some or all of the defendants, containing nearly 200 questions; defendants had filed six different sets of interrogatories against some or all of the plaintiffs, containing more than 200 questions; after objections had been argued and ruled upon by Judge Grim, defendants had answered many of these interrogatories with thirty separate sets of answers totalling nearly 2,400 pages; plaintiffs had filed answers aggregating more than 2,300 pages identifying the rock salt purchases for which damages were sought and disclosing the extent of their prior knowledge of the alleged conspiracy; forty-six days had been consumed in taking the depositions of fourteen witnesses, comprising 5,912 transcript pages, and involving the marking for identification of 415 separate exhibits; and defendants had also produced for examination, according to plaintiffs' counsel on February 1, 1966, "over a hundred thousand documents" (45b, 47b).

The foregoing detailed chronology establishes the central fact that Petitioner had both ample opportunity for timely intervention, and notice that the class would be

closed on June 1, 1966. Petitioner's claim that it "received no notice, express or constructive of the closing" (Petition, p. 12) is flatly contradicted by the record and the admissions of Petitioner's counsel made in open court.

In argument before the District Court on the motion to intervene, Petitioner's counsel first stated that:

> ". . . the problem in New York State may be one of what has often been termed the problem of governmental inaction and that some of the states and governmental units just wait to see how the litigation is developing . . ." (199a)

When the court pointed out that Petitioner certainly could have intervened within the period of six months' notice given by the Order of December 7, 1965, counsel replied:

> "I agree. I have no answer to the fact, and I would not try to be anything but candid with Your Honor; it would have been faster if New York had consulted with us earlier, even a week or two before, but nevertheless, we are confronted with the fact that the ultimate authority to proceed with the New York litigation did not arrive until after June 1st." (200a).

Moreover, counsel freely admitted that this "governmental inaction" by Petitioner was not the result of any lack of knowledge about the June 1, 1966 cut-off date, but was rather due to a *deliberate policy* decision. In summing up his argument to the trial court, counsel stated:

> "It seems to me that the real issue in the end comes down to this question. *If it was the policy for the sovereign State of New York prior to the 14th of June, 1966 not to intervene in this litigation and if, as a result of a reconsideration of all relevant factors and circumstances the Attorney General of New York concluded*

> *that the State of New York should intervene in this action, subject to the approval of this Honorable Court,* it seems to me that in view of the altered conditions that that *change of policy* should be given very serious consideration by Your Honor . . ." (214a) (Emphasis added.)

As the Court of Appeals recognized and stated, it is implicit in counsel's argument about a change of policy that Petitioner recognized the existence of the class action (Pet. App. 3a). Any conceivable doubt on this score is eliminated by the uncontested fact that, on *May 31, 1966* (the last day before the alleged class was closed), *the Attorney General of New York filed a motion to intervene on behalf of the New York Thruway Authority* (6b-9b). This establishes not only that Petitioner was fully advised of the existence of the class suit, and the need for intervention prior to June 1, 1966, but also that the Attorney General was fully capable of intervening before the cut-off date if he chose to do so. His failure to act in time can only be ascribed, as counsel for Petitioner admitted, to a deliberate decision not to intervene at that time.

Finally, and most damaging of all to Petitioner's position, is the glaring failure of the motion to intervene itself to offer any excuse whatsoever for Petitioner's failure to file before the deadline. Petitioner did not even attempt to meet its burden of justifying the untimeliness of its motion.

Respondents submit that, in the face of these facts and Petitioner's unjustified delay, there can be no question that the District Court acted within the limits of its discretion in declining to re-open the class for Petitioner's special benefit. Indeed, a contrary decision would have constituted an abuse of discretion. Petitioner's claim that defendants will suffer no prejudice if this untimely intervention is permitted ignores the fact that defendants have concluded

settlements with scores of plaintiffs in explicit reliance on the June 1, 1966 cut-off date as establishing the potential scope of their liability in this action.

Petitioner's argument also ignores the recognized power of a trial court to maintain control over the size and complexity of any litigation (particularly multi-party litigation which does not bind non-intervenors) to insure that it does not burgeon into unmanageable proportions. The Order of December 7, 1965 closing the class on June 1, 1966 was intended to, and did, achieve that wholly proper objective. The District Court's failure to depart from the terms of that Order can hardly be said to constitute an abuse of discretion appropriate for review by this Court by Writ of Certiorari, particularly where, as here, the complaining party deliberately elected not to comply with the Order.

B. The Discretionary Denial of Petitioner's Motion to Intervene Does Not Contravene the Standards for Intervention Set Forth by the Federal Rules of Civil Procedure Or by the Decisions of This Court or Any Other Court.

As set forth above, the class suit into which Petitioner seeks to intervene is a spurious class action under former F. R. C. P. 23(a)(3). The District Court so held in this case. *City of Philadelphia v. Morton Salt Company,* 248 F. Supp. 506, 513-14 (E. D. Pa. 1965). Under well settled case law, two consequences flow from this determination: first, that Petitioner will not be bound, as a non-intervening class member, by any judgment in this suit, and second, that Petitioner's attempted intervention is necessarily permissive under Rule 24(b). *E.g., Lipsett v. United States,* 359 F. 2d 956 (2d Cir. 1966); *Fox v. Glickman Corporation,* 355 F. 2d 161 (2d Cir. 1965), cert. denied sub. nom. *Levy v. Glickman Corporation,* 384 U. S. 960 (1966); 3 Moore, Federal Prac-

tice, ¶ 2314 (2d ed. 1967). But whether or not Petitioner's attempted intervention is treated as permissive or as of right, it is clear that in either case such intervention must be timely and that a trial court has discretion to deny a belated motion to intervene on the sole ground of untimeliness. *E.g., Tesseyman v. Fisher,* 231 F. 2d 583 (9th Cir. 1955); *Basle Theatres, Inc. v. Warner Bros. Pictures Distributing Corp.,* 24 F. R. D. 476 (W. D. Pa. 1959). See also, *Securities & Exchange Commission v. Bloomberg,* 299 F. 2d 315, 320 (1st Cir. 1962). As the Court of Appeals stated in the instant case, the power to fix a reasonable terminal date for intervention "is necessary to the orderly processing of litigation, to say nothing of calendar control" (Pet. App., 3a).

In the face of these well settled principles which are controlling in this case, Petitioner cites several wholly irrelevant cases in which it was held that a district court did not abuse its discretion in permitting intervention into spurious class actions at or after trial but before final judgments were entered.[3] None of these cases remotely sug-

3. In *Pentland v. Dravo Corporation,* 152 F. 2d 851 (3d Cir. 1945), cited at p. 9 of the Petition, the only issue was whether judgment on the pleadings should be granted in a spurious class suit six months after the complaint was filed, where no parties had sought intervention, and there was no evidence that any notice had been given to potential intervenors. In *Union Carbide and Carbon Corp. v. Nisley,* 300 F. 2d 561 (10th Cir. 1961), *appeal denied sub nom. Wade v. Union Carbide and Carbon Corp.,* 371 U. S. 801 (1963); *York v. Guaranty Trust Co. of New York,* 143 F. 2d 503 (2d Cir. 1944), *rev'd on other grounds* 326 U. S. 99 (1945); *State Wholesale Grocers v. Great Atlantic and Pacific Tea Company,* 24 F. R. D. 510 (N. D. Ill. 1959), and *Carroll v. American Federation of Musicians of the United States and Canada,* 33 F. R. D. 353 (S. D. N. Y. 1963); cited at pp. 8-9 of the Petition, the only question was whether the District Court might, in the exercise of its discretion, permit intervention prior to or even after trial. In *Hurd v. Illinois Bell Telephone Co.,* 234 F. 2d 942 (7th Cir. 1956), the Court of Appeals merely held that, on the unique facts of that case, it would exercise discretion in favor of permitting intervention on appeal. But not one of these cases held that a *denial* of intervention would have been an *abuse of*

gest that a District Court abuses its discretion in imposing a reasonable cut-off date for intervention before trial. Indeed, such a rigid rule would be utterly unreasonable, for it would deny to the trial court a fundamental tool for keeping complex litigation within manageable bounds, and would make it impossible for defendants in such litigation ever to make any determination, for purposes of settlement before trial, of the potential scope of their liability.

The record establishes in this case that the trial court thoroughly understood that no settlements would be possible without a final closing of the class in advance of trial. At the hearing on December 6, 1965, Judge Grim stated:

> "I would like to see the class closed long before or at least, I should say some time before the trial. I think if it isn't, it might stand in the way of settlement.
>
> "If the defendants know exactly what they have to meet, if the class is closed and they know exactly what they have to meet, that is one thing. If they don't that is another thing. One might say that you can't settle anything because you don't know what you are up against at the present time, and this is going through my mind as maybe the sensible way to do it" (106a).

The subsequent history of settlement negotiations in this litigation fully supports the trial court's reasoning.

It is wholly misleading to assert, as does Petitioner, that if intervention is denied, the original class suit will have been converted into a "trap" because, it is implied, Peti-

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discretion, nor did they involve the failure of an intervening party to seek intervention within a reasonable period determined in advance by the court. *Escott v. Barchris Construction Corp.,* 340 F. 2d 731 (2d Cir. 1965), *cert. denied sub nom. Drexel & Co. v. George Hall,* 382 U. S. 816 (1965), cited at pp. 8, 12 and 13 of the Petition, involved solely the question of whether the filing of a spurious class action tolls the statute of limitations with respect to all members of the alleged class.

tioner has innocently relied on the original action to preserve its rights. Aside from the fact that Petitioner is now pressing its rights in a separate suit, this boot-strap argument ignores the critical fact that Petitioner had ample opportunity to intervene prior to the cut-off date and deliberately chose not to do so. The issue here is not whether intervention could have been fairly denied to Petitioner *prior* to the cut-off date. If that was the question, some of the cases cited by Petitioner might have conceivable relevance. But in this case, Petitioner had no basis for relying, and did not in fact rely, on the original class action as preserving its claims beyond June 1, 1966, because Petitioner well knew that intervention would not be permitted after that date. Having failed to take any action prior to the deadline, Petitioner was not "trapped" by anything; it is merely complaining of the entirely foreseeable consequences of its own premeditated policy of inaction.

Finally, Petitioner can receive no comfort here from language in any decision of this Court concerning the importance of private antitrust litigation in enforcing the antitrust laws. The possible utility of private treble damage suits in supplementing such enforcement does not give Petitioner a license to ignore the trial court's reasonable order prescribing a limitation on further intervention. The Federal Rules of Civil Procedure apply to antitrust plaintiffs as well as to all other civil litigants; indeed, the need for effective control of the dimensions of a multi-party lawsuit is particularly compelling in the case of complex antitrust litigation. Petitioner's argument amounts to a plea for preferred treatment which finds no basis in either the Federal Rules or the decisions of this Court. The fact that Petitioner is a public body is irrelevant. As the Court of Appeals stated in its opinion:

"The procedures and provisions fairly established by our courts are binding on public as well as private litigants" (Pet. App. 4a).

IV.

CONCLUSION.

For the reasons stated above, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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